

**BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

IN THE MATTER of designating the
counties of Door, Kenosha, Kewaunee,
Manitowoc, Milwaukee, Ozaukee,
Racine, Sheboygan, Washington, and
Waukesha as ozone nonattainment
areas for the 8-hour ozone standards.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

FINDINGS OF FACT

The Department of Natural Resources, hereinafter DNR, finds that:

1. USEPA promulgated the primary and secondary ambient air quality standards for the 8-hour ozone standard in July, 1997. After a judicial challenge to the standards was resolved by the U.S. Supreme Court, the 8-hour ozone standards became effective on February 27, 2001.
2. The 8-hour ozone standards were adopted by the Natural Resources Board on September 22, 2004 and will be incorporated into s. NR 404.04(5), Wis. Adm. Code. The ambient air quality standards are specific levels of air quality which are deemed necessary to provide adequate protection for human health and welfare.
3. The primary and secondary ambient air quality standards for the eight-hour ozone standards adopted by the Natural Resources Board are identical to the federal ozone national ambient air quality standards (NAAQS). The eight-hour ozone ambient air quality standards are 0.08 parts per million (ppm). The ozone standards are attained when the arithmetic mean of the fourth highest daily maximum eight-hour concentration at an ambient air quality monitoring site is less than or equal to 0.08 ppm, as determined by the methodology of 40 CFR part 50, Appendix I.
4. Based on ozone monitoring data collected from 2000-2002 under authority of the Clean Air Act, USEPA identified all 8-hour ozone nonattainment areas in the United States on April 15, 2004. In Wisconsin, USEPA designated the 10 counties of Door, Kenosha, Kewaunee, Manitowoc,

Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha as nonattainment areas for the 8-hour ozone standards. USEPA's designation of Wisconsin counties was based in part on a July 11, 2003 technical document prepared by DNR which supported the Governor's recommendations to USEPA on the appropriate nonattainment areas for the 8-hour ozone standard.

5. The ozone air quality in each of these 10 Wisconsin counties has been classified by USEPA according to the classification system in 42 USC secs. 7501 et seq. USEPA has classified the counties of Milwaukee, Ozaukee, Racine, Washington, Waukesha, Kenosha and Sheboygan as "Moderate" nonattainment areas and the counties of Door, Kewaunee, and Manitowoc as "Basic" nonattainment areas.

Classification of the ozone nonattainment areas is based on the classification system contained in subpart 1 and 2 of title I, part D of the Clean Air Act, 42 USC secs. 7501 et seq. These pertinent classifications of ozone are as follows:

- "Moderate" refers to those ozone nonattainment areas whose 8-hour design ambient ozone value is in the range between 0.092 and 0.107 ppm. USEPA's April 15, 2004 designation requires that Moderate ozone nonattainment areas attain the ozone standards no later than June 15, 2010.
 - "Basic" refers to those ozone nonattainment areas whose one-hour design ambient ozone values is less than 0.121 ppm. USEPA's April 15, 2004 designation requires that Basic ozone nonattainment areas attain the ozone standards no later than June 15, 2009.
6. Section 285.23, Stats., and Chapter NR 401, Wis. Adm. Code, require the DNR to list areas designated as nonattainment areas.
 7. The DNR's proposed designation of 8-hour ozone nonattainment areas is based on the more detailed information in the DNR's July 11, 2003 technical document provided to USEPA in support of the Governor's recommendations for USEPA's designation of 8-hour ozone nonattainment areas.

CONCLUSIONS OF LAW

The DNR concludes that:

1. The DNR has the authority to designate Wisconsin areas as being in nonattainment of an ambient air quality standard under s. 285.23, Wis. Stats., and ch. NR 401, Wis. Adm. Code.
2. The DNR has complied with the requirements of s. 285.23, Wis. Stats., and ch. NR 401, Wis. Adm. Code, in identifying nonattainment areas for the 8-hour ozone ambient air quality standards.

DECISION

The DNR hereby designates the counties of Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha as nonattainment areas for the 8-hour ozone standards.

Dated at Madison, Wisconsin February 22, 2005

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By /s/
Scott Hassett, Secretary